

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**TMAC FARMS, LLC**

Johnson Township, Plymouth County  
Facility #62440

ADMINISTRATIVE CONSENT ORDER

NO. ~~2010~~-AFO-02  
2011

TO: Andrew Less, Registered Agent  
TMAC Farms, LLC  
19381 Fir Avenue  
Akron, Iowa 51001

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and TMAC Farms, LLC (TMAC) for the purpose of resolving TMAC's failure to timely submit a Manure Management Plan (MMP) update and fees for 2010 for its animal confinement facility. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to Technical Requirements:**

Cindy Martens, Field Office 3  
Iowa Department of Natural Resources  
1900 N. Grand – Gateway North, Suite E17  
Spencer, Iowa 51031-2200  
Phone: 712/262-4177

**Relating to Legal Requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-8563

**Payment of Penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: TMAC FARMS, LLC

Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. TMAC owns and operates a 4,400 head (1,760 animal units) grow to finish hog confinement facility. The facility is located at two sites: 19381 Fir Avenue Akron, Iowa and 19550 Fir Avenue, Akron, Iowa (Section 20, Johnson Township, Plymouth County and Section 21, Johnson Township, Plymouth County). The two sites are adjacent and considered one facility.

2. On May 19, 2009, DNR Field Office 3 sent TMAC a letter stating a complete MMP with Phosphorus Index and compliance fee was due February 1, 2010. The letter also included a note stating that DNR would no longer be sending courtesy notices of the due dates for the MMP updates. On February 8, 2010, Andrew Less, a TMAC representative, contacted DNR Field Office 3 and explained that because of the harsh fall that his fields still had standing crops. He stated he was unable to obtain the soil samples necessary for the Phosphorus Index. DNR Field Office 3 told Mr. Less to submit a complete plan with the compliance fee and note incomplete soil sampling. The field office informed Mr. Less that once the soil sampling was completed he was to resubmit the soil sampling page, RUSLE2, and Phosphorus Index with the correct numbers. Mr. Less was given until May 10, 2010 to submit the soil sampling information.

3. On February 11, 2010, DNR Field Office 3 issued a Notice of Violation letter to TMAC for failing to submit the complete MMP update by February 1, 2010. TMAC was given until March 1, 2010 to submit the complete MMP.

4. On March 8, 2010, TMAC submitted a short form MMP update with the compliance fee. On March 10, 2010, DNR Field Office 3 sent TMAC an incomplete MMP letter stating the complete Phosphorus Index MMP must be submitted by May 10, 2010 to avoid further enforcement. TMAC failed to submit the Phosphorus Index by May 10, 2010. On May 27, 2010, DNR Field Office 3 sent a Notice of Referral to TMAC for the incomplete MMP.

5. On June 3, 2010, Mr. Less contacted DNR Field Office 3 and stated the soil samples and tests had been completed. He stated the information would be submitted to Field Office 3 within the week. On June 14, 2010, TMAC submitted the complete MMP to DNR Field Office 3.

6. TMAC has demonstrated a long history of failing to timely submit the MMP update and compliance fees for its facility. On February 9, 2007, TMAC was issued a Notice of Violation letter for failing to submit the 2007 MMP update and fees by February 1, 2007. TMAC submitted the MMP update and fees on February 22, 2007. On February 12, 2008, TMAC was issued a Notice of Violation letter for

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: TMAC FARMS, LLC

failing to submit the 2008 MMP update and fees by February 1, 2008. TMAC submitted the MMP update and fees on February 24, 2008. On February 11, 2009, TMAC was issued a Notice of Violation letter for failing to submit the 2009 MMP update and fees by February 1, 2009. TMAC submitted the MMP and fees on March 2, 2009.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations. The Commission has adopted such rules at 567 IAC chapter 65.

2. 567 IAC 65.17 includes the requirements that must be included in a MMP. 567 IAC 65.17(16) and 567 IAC 65.17(17)"h" requires that a Phosphorus Index must be updated a minimum of once every four years. TMAC's last Phosphorus Index was submitted in 2006. TMAC failed to submit a timely Phosphorus Index. The above-mentioned facts indicate a violation of this provision.

**V. ORDER**

THEREFORE, the DNR orders and TMAC agrees to do the following:

1. TMAC shall pay an administrative penalty of \$2,000.00 in accordance with the following payment plan:

|                                |                                |
|--------------------------------|--------------------------------|
| \$91.00 due January 1, 2011;   | \$83.00 due January 1, 2012;   |
| \$83.00 due February 1, 2011;  | \$83.00 due February 1, 2012;  |
| \$83.00 due March 1, 2011;     | \$83.00 due March 1, 2012;     |
| \$83.00 due April 1, 2011;     | \$83.00 due April 1, 2012;     |
| \$83.00 due May 1, 2011;       | \$83.00 due May 1, 2012;       |
| \$83.00 due June 1, 2011;      | \$83.00 due June 1, 2012;      |
| \$83.00 due July 1, 2011;      | \$83.00 due July 1, 2012;      |
| \$83.00 due August 1, 2011;    | \$83.00 due August 1, 2012;    |
| \$83.00 due September 1, 2011; | \$83.00 due September 1, 2012; |
| \$83.00 due October 1, 2011;   | \$83.00 due October 1, 2012;   |
| \$83.00 due November 1, 2011;  | \$83.00 due November 1, 2012;  |
| \$83.00 due December 1, 2011;  | \$83.00 due December 1, 2012.  |

If any of the payments are not received in accordance with the payment schedule; the remaining penalty shall be due immediately.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: TMAC FARMS, LLC

of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$2,000.00. The administrative penalty is determined as follows:

Economic Benefit – TMAC's failure to timely submit the complete 2010 MMP update with a Phosphorus Index has allowed the facility to save time and money. The facility has gained an economic benefit from the delay in the submittal and the sampling. \$50.00 is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. TMAC's failure to timely submit the MMP update with a Phosphorus Index threatens the integrity of the animal feeding operation program. The MMP update and Phosphorus Index is a crucial aspect of the DNR's animal feeding operation program. The MMP update and Phosphorus Index ensure that an animal feeding operation has adequate production land available so that the manure can be properly applied to crop land at an agronomic rate in order to prevent over application of manure. The facility has a capacity of 1,760 animal units and environmental harm is likely to occur if the manure is not applied properly. Therefore, \$950.00 is assessed for this factor.

Culpability – TMAC has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. DNR Field Office 3 provided TMAC an extension to submit the Phosphorus Index and TMAC failed to meet the extension deadline. Additionally, the facility has submitted untimely MMP updates and fees in 2009, 2008, and 2007. Each year the facility was issued a Notice of Violation letter explaining the violations. Therefore, \$1,000.00 is assessed for this factor.


## **VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of TMAC. For that reason TMAC waives the right to appeal this administrative consent order or any part thereof.

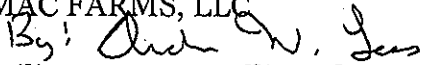
IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: TMAC FARMS, LLC

**VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

  
\_\_\_\_\_  
PATRICIA L. BODDY, INTERIM DIRECTOR  
Iowa Department of Natural Resources

Dated this 7 day of  
January, 2010.

TMAC FARMS, LLC  
\_\_\_\_\_  
TMAC FARMS, LLC  
By:   
Facility #62440; Kelli Book, DNR Field Office 3, EPA, VIII.C.2

Dated this 15 day of  
December, 2010.